

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LYNNE HOUSERMAN,

Plaintiff,

v.

COMTECH TELECOMMUNICATIONS
CORPORATION, FRED KORNBERG, AND
MICHAEL D. PORCELAIN,

Defendants.

No.

COMPLAINT

JURY DEMAND

COMPLAINT

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I. NATURE OF ACTION

1.1 Plaintiff Lynne Houserman brings this action for breach of contract, failure to pay wages due, unlawful withholding of wages, and unlawful retaliation against her former employer, Comtech Telecommunications Corp. (“Comtech”); Fred Kornberg, its Chairman, Chief Executive Officer, and President; and Michael D. Porcelain, its Senior Vice President and Chief Operating Officer (collectively, the “Defendants”).

II. PARTIES

2.1 Plaintiff Lynne Houserman is the former President of Defendant Comtech’s Safety and Security Technologies group (“SST”). She is a citizen of King County, Washington. Virtually all events giving rise to this lawsuit occurred in Washington state.

2.2 Defendant Comtech is a Delaware corporation with principal place of business in New York. Comtech owns and controls TSYS.

2.3 Defendant Fred Kornberg is an individual residing in the State of New York.

2.4 Defendant Michael D. Porcelain is an individual residing in the State of New York. Mr. Porcelain served as Comtech’s Chief Financial Officer for twelve years prior to being promoted to COO in October 2018.

III. JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over Ms. Houserman’s claims pursuant to 28 U.S.C. § 1332(a)(1).

3.2 Venue properly rests with this Court pursuant to 28 U.S.C. § 1391(b)(2). All of the actions alleged herein transpired in this district. Defendants have caused a subsidiary of Comtech, TeleCommunications Systems, Inc., (“TSYS”) to sue Plaintiff in this district. This lawsuit is

1 directly related to *TeleCommunication Systems, Inc. v. Houserman*, case no. 2:19-CV-00336-RAJ
 2 (W.D. Wash Mar. 6, 2019), as, among other reasons, Plaintiff Lynne Houserman asserts herein
 3 that her 2014 employment agreement with TSYS was replaced and/or superseded by her
 4 employment agreement with Comtech after Comtech acquired TSYS and entered into a new
 5 employment contract with materially different terms.
 6

7 IV. FACTS

8 4.1 On September 2, 2014, Ms. Houserman executed an employment agreement with
 9 TSYS (the “2014 TSYS Agreement”) under which she would become Senior Vice President,
 10 Safety and Security Group of TSYS.
 11

12 4.2 On February 27, 2016, Ms. Houserman signed an employment agreement offered
 13 by Comtech (the “2016 Comtech Agreement”) under which she would become President of
 14 Comtech’s Safety and Security Technologies Group (“SST”). *See* Exhibit A, attached hereto. In
 15 addition to being a new position with a new employer, the 2016 Comtech Agreement contained
 16 other material terms that conflicted with her old 2014 TSYS Agreement: (1) new compensation,
 17 (2) new bonus plan and structure (using Comtech’s goal sheets), (3) new stock compensation, (4)
 18 new benefits, and (5) a new reporting structure. Notably absent from the 2016 Comtech
 19 Agreement were any non-solicitation or non-competition provisions.
 20

21 4.3 The 2016 Comtech Agreement superseded or replaced the 2014 TSYS Agreement.

22 4.4 The 2016 Comtech Agreement provided that Ms. Houserman would be eligible to
 23 receive a retention bonus of up to one year’s base salary subject to her continued employment
 24 with Comtech through the third anniversary of the closing of the acquisition of TSYS. The 2016
 25 Comtech Agreement further provided that if Ms. Houserman’s employment was terminated
 26

1 without “cause” prior to her third anniversary, she would be eligible to receive a pro-rata portion
 2 of the Retention Bonus (which was defined in the 2016 Comtech Agreement as the “Pro-Rata
 3 Retention Bonus,” (adopted herein as well)).

4 4.5 In addition, the 2016 Comtech Agreement defined “cause” as follows:

5 Your willful misconduct (including a failure to act), willful neglect, willful
 6 malfeasance or gross negligence in carrying out your duties hereunder, or “willful
 7 breach” of this letter agreement Under this provision, “willful breach” shall
 8 include, but not be limited to, insubordination, serious dereliction of fiduciary
 9 obligation, chronic abuse by you of alcohol or narcotics, a violation of any material
 10 Company rule, regulation or policy, or a serious violation of any law governing the
 11 workplace. It is provided further that **no act or failure to act shall be considered**
 12 **“willful” if you reasonably believed in good faith that such act or failure to act**
 13 **was in the best interests of Company and its affiliates[.]**

14 (emphasis added).

15 4.6 Following the acquisition of TSYS, Ms. Houserman was the only woman in
 16 executive leadership at Comtech.

17 4.7 Between April 27, 2016, and August 13, 2016, Ms. Houserman was on maternity
 18 leave after giving birth to her second child.

19 4.8 While Ms. Houserman was on maternity leave, Comtech decided to move SST’s
 20 call handling responsibilities from Ms. Houserman’s division to a division run by a male
 21 president, Jay Whitehurst. At that time, call handling represented a small portion of Ms.
 22 Houserman’s responsibilities at Comtech.

23 4.9 In September 2016, Ms. Houserman, Mr. Whitehurst, and Chief Financial Officer
 24 Michael Porcelain reached an agreement regarding the effect of the transfer of the call handling
 25 responsibilities on Ms. Houserman’s variable bonus compensation for FY 2017.¹ As a loss was

26 ¹ Comtech’s FY 2017 ran from August 1, 2016 – July 31, 2017

projected for the call handling division for FY 2017, Ms. Houserman agreed that her actual 2017 “pre-tax profit” achievement would be reduced by \$6.297 million for the purposes of calculating the bonus achievement against the division’s goals as set by the Executive Compensation Committee on her 2017 Goal sheet, regardless of the actual pre-tax profit performance of the call handling division. If the call handling division had a loss over \$6.297 million, it would reduce Mr. Whitehurst’s pre-tax profit achievement number. However, if the call handling division had a profit before tax loss less than \$6.297 million, Ms. Houserman’s co-worker, Jay Whitehurst’s pre-tax profit achievement number would be credited for that amount.

4.10. Comtech and Ms. Houserman agreed upon a set bonus amount if Ms. Houserman met all of Comtech’s four different targeted goals, illustrated in the table below:

Description of Goals	Target Amts. (\$)	% of Target Payout (total =100%)
1. Pre-tax profit (actuals as defined less \$6,297,000)	\$6,000,000	25%
2. New Orders	\$95,000,000	25%
3. “Free” Cash Flow	\$17,500,000	25%
4. Personal Goals	5 non-monetary goals each weighted 5%.	25%

4.11 Thus, under this agreement, the Fiscal Year 2017 Goal Sheet for Ms. Houserman’s division would include a \$6.297 million reduction from SST’s actual pre-tax profit achievement for the fiscal year beginning August 1, 2016, and ending July 31, 2017 (“FY 2017 Goal Sheet”).

4.12 In September 2016 or at any time since, Ms. Houserman, Mr. Whitehurst, and Mr. Porcelain did not discuss nor come to any agreement regarding the effect of the transfer of Ms. Houserman’s call handling responsibilities on future pre-tax profit goals for FY 2018.² In fact,

² FY 2018 ran from August 1, 2017 to July 31, 2018.

Mr. Porcelain's September 21, 2016 email setting forth the agreement between Comtech, Jay Whitehurst and Ms. Houserman only stated that the \$6.297 million reduction to her achievement applied to FY 2017, and it did not reference treatment for subsequent years.

4.13 In September 2017, which was at the beginning of FY 2018, Comtech sent Ms. Houserman a Fiscal Year 2018 Goal Sheet for the fiscal year beginning August 1, 2017, and ending July 31, 2018 ("FY 2018 Goal Sheet") and demanded that she sign and return it within two business days.

4.14 Ms. Houserman signed the FY 2018 Goal Sheet without noticing that it included the same \$6.297 million reduction from SST's pre-tax profit achievement that had been included in the FY 2017 Goal Sheet.

4.15 The FY 2018 Goal Sheet dramatically increased the pre-tax profit achievement required for Ms. Houserman to meet her target pre-tax profit goal, as illustrated by this table:

Description of Goals	Target Amt.	% of Target Payout (total =100%)
1. Pre-tax profit (<i>actuals will be calculated with a reduction of \$6,297,000</i>)	\$17,500,000	25%
2. New Orders	\$95,000,000	25%
3. "Free" Cash Flow	\$20,00,000	25%
4. Personal Goals	5 non-monetary goals each weighted 5%.	25%

(emphasis added).

4.16 In early November 2017, when SST's finance director was calculating the proper amount of funds to withhold for bonuses, he brought the \$6.297 million reduction from pre-tax profit achievement included in her division's FY 2018 Goal Sheet to Ms. Houserman's attention. Because she, Mr. Whitehurst, and Mr. Porcelain had not discussed any reduction from SST's FY 2018 pre-tax profit achievement for the purpose of calculating bonuses, Ms. Houserman believed

1 in good faith that the \$6.297 million reduction had been mistakenly included on the FY 2018 Goal
2 Sheet. To include the \$6.297 million reduction amounted to a substantial increase in the pre-tax
3 profit achievement above her pre-tax profit Goal (\$17,500,000 + \$6,297,000) required to earn a
4 bonus for FY 2018.

5
6 4.17 As a division president, she is required to instruct SST's finance director to
7 withhold a sufficient amount of funds from the monthly forecast to cover the annual expense of
8 bonuses for both herself and the more than 300 employees in her division. In addition to the
9 bonus expense for her bonus, Comtech's policy is that 5% of a division's pre-tax profit should be
10 accrued for a bonus pool for division employees not otherwise covered by a variable
11 compensation plan. So when Ms. Houserman was informed that Comtech sought a \$6.297 million
12 reduction to SST's pre-tax profit achievement for FY 2018, she immediately contacted Mr. Fred
13 Kornberg to notify him that Comtech had made an error in the FY 2018 Goal Sheet that would
14 cause a negative impact to her entire division's annual bonuses. On information and belief, with
15 the \$6.297 million reduction taken into consideration, no other Comtech president had his pre-tax
16 profit achievement goal increased to the same extent as Ms. Houserman for FY 2018. In addition,
17 Ms. Houserman did not agree to any FY 2018 reductions to her division's pre-tax profit
18 achievement as a result of Comtech's decision to move call handling to another executive.
19

20
21 4.18 Between November 2017 and January 2018, Ms. Houserman repeatedly reached
22 out to Chief Executive Officer Fred Kornberg regarding her concern that the \$6.297 million
23 reduction in her FY 2018 pre-tax profit for the purpose of calculating SST's annual bonus pool
24 for herself and her division's employees was a mistake. She emailed Mr. Kornberg on November
25 9, 2017, November 10, 2017, November 28, 2017, and February 13, 2018, to point out the \$6.297
26

1 million reduction error in her FY 2018 Goal Sheet and repeatedly asked for a timeframe in which
2 her inquiry would be addressed. Mr. Kornberg never gave her an answer as to whether the
3 \$6.297M was a mistake or for what reason it was applied to her FY2018 Goals. Instead, he replied
4 with a number of excuses such as it was being researched, later that he would address it after a
5 Shareholder's meeting and again, that she should be patient, as the fiscal year was "only" half
6 over. In fact, her November 2017 inquiry was only ever answered on the day of her termination
7 in April 2018, when she was first told that Comtech had intended to apply a \$6.297 million
8 reduction to her achievement for 5 years, beginning in FY 2017.

10 4.19 She also documented her concerns in reports including her Q1 and Q2 Quarterly
11 Financial and Disclosure Consideration Checklists and her January 2018 Monthly President
12 Report. Between November 2017 and February 2018, while she waited for the company to
13 respond to her concerns, Ms. Houserman instructed SST's finance director to accrue bonus
14 expenses for interim monthly financial packages based on SST's pre-tax profit goal without taking
15 the \$6.297 million reduction into account. She took these actions in good faith based on her belief
16 that the reduction on her FY 2018 Goal Sheet was a mistake. She also believed this more
17 conservative approach to expense accruals was in the best interests of the company, so Comtech
18 would not have to make an adjustment later to correct what she believed was an error.

21 4.20 The real reason for the delay in responding to Ms. Houserman, was that Mr.
22 Kornberg was concerned about a substantial renewal contract that Ms. Houserman was working
23 on obtaining for Comtech.

24 4.21 During a February 13, 2018 telephone call on an unrelated topic, Mr. Porcelain, for
25 the first time, told Ms. Houserman that he believed the \$6.297 million reduction in FY 2018 pre-
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1 tax profit had not been a mistake. He claimed that he was not privy to the Executive
2 Compensation Committee's final decisions, but that he guessed that the pre-tax profit
3 achievement reduction was intended to be a "call-up" to \$23,797,000 for FY 2018 from the goal
4 of \$17,500,000 or that the reduction was a repeat of the same treatment of call handling for
5 FY 2017.
6

7 4.22 Ms. Houserman protested, claiming that if it was a "call-up", that her \$17,500,000
8 pre-tax profit goal was already 9% higher than her division's pre-tax profit Board-approved
9 budget of \$16,000,000. A "call-up" to \$23,797,000 (with the \$6,297 reduction) was a 48%
10 increase from her division's Board-approved budget pre-tax profit target of \$16,000,000.
11

12 4.23 Ms. Houserman questioned whether other Comtech presidents were being given
13 goals that were a 48% increase from their pre-tax profit budget targets (taking into consideration
14 the \$6.297 million reduction to her achievement), and requested data concerning the goal sheets
15 for the 5 other divisional presidents who had similar job functions and responsibilities.

16 4.24 Ms. Houserman also protested claiming that if it was related to call handling
17 performance, she had never agreed to a FY 2018 compensation impact when Comtech made a
18 decision to move call handling to another executive. Even if she had agreed to this, Ms.
19 Houserman argued that a \$6.297 million reduction to her pre-tax profit would be inappropriate,
20 given the call handling division's (1) better-than-expected financial performance in FY 2017 and
21 (2) projected losses that were significantly lower than \$6.297 million in FY 2018.
22

23 4.25 She told Mr. Porcelain that she believed that she was being treated unfairly because
24 no other division president was required to over-achieve their pre-tax profit budget goals in order
25 for his division to receive bonus compensation. All other division presidents were male.
26

1 4.26 Mr. Porcelain cautioned Ms. Houserman about pressing the issue, telling her to be
2 “careful what she wished for” in pursuing this issue with the Board and threatening that Ms.
3 Houserman’s efforts to correct the FY 2018 Goal Sheet could lead Comtech to claw back portions
4 of her past bonuses or increase her FY 2018 bookings target, which she was over-achieving at the
5 time.
6

7 4.27 Mr. Porcelain called Ms. Houserman the following day, telling her not to take
8 anything he’d said the day prior as factual, but that from a compliance perspective, Ms.
9 Houserman was to document her concerns and send them to Mr. Porcelain, who served as
10 Comtech’s Compliance Officer. Ms. Houserman documented her concerns about the FY 2018
11 pre-tax profit issue and Mr. Porcelain’s threats of retaliation in an email to Mr. Porcelain on
12 February 18, 2018. After receiving no response, she forwarded her concerns to Mr. Kornberg on
13 February 27, 2018 to ensure he was aware of Mr. Porcelain’s threats of retaliation as well.
14

15 4.28 On March 19, 2018, Mr. Kornberg notified Ms. Houserman that Comtech had
16 assigned an attorney from Proskauer Rose LLP to purportedly investigate her concerns, including
17 allegations of sex discrimination and Mr. Porcelain’s threats of retaliation. Proskauer Rose LLP
18 had a long relationship with Comtech and its executives and regularly performed legal work for
19 Comtech.
20

21 4.29 Ms. Nicole Eichberger of Proskauer Rose LLP conducted an “investigation” of Ms.
22 Houserman’s claims, but it quickly became apparent that she had predetermined the outcome, as,
23 among other reasons, she focused more on Ms. Houserman’s direction to accounting to accrue
24 bonus expenses rather than on Ms. Houserman’s allegations of disparate treatment with respect
25 to the proposed \$6.297 reduction to her pre-tax profit achievement on her FY 2018 Goal Sheet.
26

1 4.30 On April 2, 2018, Ms. Houserman attended a conference call with Mr. Kornberg
2 and Comtech's outside attorney from Proskauer Rose LLP regarding the investigation.
3 Comtech's attorney purported to recount the nature of her investigation and her purported
4 conclusion that Ms. Houserman's allegations of sex discrimination and retaliation were not
5 substantiated. Further, for the first time, Ms. Eichberger told Ms. Houserman during this
6 conference call that it was Comtech's intent to reduce her pre-tax profit achievement by \$6.297
7 million each year for a full five years after transferring call handling responsibilities to another
8 executive. Ms. Eichberger explained that Mr. Porcelain commonly used the phrase "be careful
9 what you wish for" to everybody "as a general statement" and "as a euphemism." Ms. Eichberger
10 did not provide a written copy of her findings to Ms. Houserman.
11

12 4.31 Immediately thereafter, Mr. Porcelain terminated Ms. Houserman's employment
13 with Comtech. The termination letter falsely and incorrectly alleges that Ms. Houserman's
14 termination was for "good cause" due to her instruction to SST's finance director to accrue
15 expenses for the division's FY 2018 bonuses based on the assumption that the \$6.297 million
16 reduction in pre-tax profit was a mistake.
17

18 4.32 Among other things, Comtech did not take into account Ms. Houserman's good
19 faith, reasonable belief that the reduction was a mistake and her good faith, reasonable belief that
20 the conservative accrual approach was in the best interest of the company. Furthermore, Comtech
21 failed to take into account Mr. Kornberg's utter failure to communicate whether or not the \$6.297
22 million reduction in pre-tax profit on her FY 2018 Goal Sheet was a contributing factor to Ms.
23 Houserman's accrual of additional bonus related expenses.
24
25
26

1 4.33 Comtech waited to terminate Ms. Houserman until after she secured a large contract
2 renewal worth \$134 million to provide 9-1-1 services to a major wireless carrier for Comtech.
3 Comtech announced the contract in a February 20, 2018, press release through Business Wire.

4 4.34 Comtech refused to pay Ms. Houserman the retention benefits that were due to her
5 under the 2016 Comtech Agreement, including a retention would have amounted to more than
6 two-thirds of a year's worth of salary. In addition, it refused to pay her for various prior incentive
7 awards, including her 2017 bonus and stock options and grants, that amounted to more than
8 \$200,000 at the time of her termination.
9

10 4.35 The amount in controversy in this lawsuit, exclusive of interest and costs, exceeds
11 the sum or value of \$75,000.
12

13 **V. CAUSE OF ACTION ONE:**
14 **BREACH OF CONTRACT AGAINST DEFENDANT COMTECH**

15 5.1 Ms. Houserman repeats, as if fully set forth herein, paragraphs 1.1 through 4.35.

16 5.2 The 2016 Comtech Agreement is the only valid contract between Ms. Houserman
17 and Comtech and its affiliates, including TSYS.

18 5.3 Ms. Houserman has performed all of her required obligations under the 2016
19 Comtech Agreement up until the date of her termination.

20 5.4 Ms. Houserman's termination by Comtech was without "cause," as that term is
21 defined in the 2016 Comtech Agreement. However, Comtech falsely asserted that it had "cause"
22 to terminate Ms. Houserman.

23 5.5 As a result of its erroneous belief that it had "cause" to terminate Ms. Houserman,
24 Defendant Comtech has refused to provide Ms. Houserman with the separation benefits due under
25 the 2016 Comtech Agreement, including, without limitation, her "Pro-Rata Retention Bonus" and
26

1 cancelled or clawed-back certain stock equity grants and her 2017 bonus.

2 5.6 Comtech's unjustified, unlawful termination of Ms. Houserman and assertion that
3 she was terminated with "cause" rendered Ms. Houserman's performance of a "release"
4 impossible, and Comtech failed to provide Ms. Houserman with the "Release" which the 2016
5 Comtech Agreement required Comtech to provide within 7 days of Ms. Houserman's termination.
6 Thus, she was relieved of that obligation.
7

8 5.7 As a direct and proximate result of Defendant Comtech's breaches of contract, Ms.
9 Houserman has been damaged in an amount to be proved at trial and no less than \$75,000.

10 **VI. CAUSE OF ACTION TWO:**
11 **VIOLATION OF RCW 49.52.050 and 49.52.070 AGAINST ALL DEFENDANTS**

12 6.1 Plaintiff incorporates paragraphs 1.1-5.7 as if set forth herein.

13 6.2 RCW 49.52.050 prohibits any employer, officer, vice-principal, or managing agent
14 from willfully withholding wages due to any employee.

15 6.3 The payments due to Ms. Houserman under the 2016 Comtech Agreement
16 constitute wages within the meaning of RCW 49.52.050.
17

18 6.4 Defendants Mr. Kornberg and Mr. Porcelain are officers, vice-principals, or
19 managing agents of Defendant Comtech within the meaning of RCW 49.52.050. Mr. Kornberg
20 and Mr. Porcelain had authority over the payment of the wages due to Ms. Houserman.

21 6.5 Defendants' willful withholding of the wages due to Ms. Houserman under the
22 2016 Comtech Agreement constitutes violations of RCW 49.52.050.

23 6.6 RCW 49.52.070 provides that the remedy for a violation of RCW 49.52.050 is
24 payment of twice the wages wrongfully withheld.
25
26

6.7 As a direct and proximate result of Defendants' violations of RCW 49.52.050, Ms. Houserman has been damaged in an amount to be proved at trial and no less than \$75,000.

**VII. CAUSE OF ACTION THREE:
VIOLATION OF THE WASHINGTON LAW AGAINST DISCRIMINATION AGAINST
ALL DEFENDANTS**

7.1 Plaintiff incorporates paragraphs 1.1-6.7 as if set forth herein.

7.2 RCW 48.60.180(3) provides that it is an unfair practice for any employer to discriminate against any person in compensation or in other terms or conditions of employment because of sex.

7.3 During the time that Ms. Houserman was on maternity leave with her second child from April 27, 2016 – August 13, 2016, her call handling responsibilities were transferred by Comtech to a male co-worker, Jay Whitehurst. Comtech's SST group had three main product sources: wireless/voip 911 services, 9-1-1 call routing and 9-1-1 call handling.

7.4 As a result of anticipated losses to the call handling section, in September 2016, Ms. Houserman agreed that her actual 2017 "pre-tax profit" achievement would be reduced by \$6.297 million for the purposes of calculating the bonus achievement against the SST division's goals as set by the Executive Compensation Committee on her 2017 Goal Sheet, regardless of the actual pre-tax profit performance of the call handling division. The \$6.297 million reduction was based upon an assumed loss to the call handling division projected for FY 2017. Ms. Houserman expected the profits from her remaining product lines would offset the proposed \$6.297 million reduction to her pre-tax profit.

7.5 This reduction was proposed in writing by Mr. Porcelain and specifically referenced the bonus treatment for FY 2017. Ms. Houserman agreed to a one-time reduction in her

1 divisions' pre-tax profit for FY 2017 only. Under the arrangement with Comtech, Jay Whitehurst
2 would be given a credit if the call handling division's losses were less than \$6.297 million.

3 7.6 In FY 2017, the call handling division suffered a less-substantial loss than
4 anticipated, at approximately \$3.0 million, meaning that Ms. Houserman suffered a reduction to
5 her pre-tax profit, while Jay Whitehurst was given a credit towards his pre-tax profit goal for FY
6 2017.

7
8 7.7 Notwithstanding such reduced loss, in September 2017, Comtech officer Mr.
9 Porcelain sent Ms. Houserman a Fiscal Year Goal Sheet for FY 2018 with the same reduction as
10 in FY 2017 to Ms. Houserman's pre-tax profit achievement for the purposes of calculating her
11 bonus, or \$6.297 million.

12
13 7.8 On information and belief, the projected loss for FY 2018 for Comtech's call
14 handling division was not projected to be \$6.297 million, but more in the range of \$2.5 million.

15 7.9 Comtech has provided no reasonable justification for reducing Ms. Houserman's
16 pre-tax profit in the exact amount of \$6.297 million for the FY 2018 Goal Sheet.

17 7.10 On information and belief, Ms. Houserman's co-worker Jay Whitehurst was given
18 a credit towards his pre-tax profit goal in FY 2018 as a result of the call handling division having
19 losses less than \$6.297 million.

20
21 7.11 Ms. Houserman was the only female president at Comtech.

22 7.12 She was well-qualified for her position, and generated substantial revenues for
23 Comtech and its predecessor, TSYS.

1 7.13 Ms. Houserman closed more than \$142 million in new business in FY 2018 alone,
2 including a major contract with a wireless carrier that Comtech boasted was worth \$134 million in
3 a February 2018 press release.

4 7.14 On information and belief, similarly situated male-presidents of Comtech did not
5 have the same level of reduction to their pre-tax profit achievement used for bonus calculation for
6 FY 2018, or the same percentage of call-up from their projected pre-tax profit goal.

7 7.15 On information and belief, a male executive, Jay Whitehurst, directly benefited
8 from the reduction of Ms. Houserman's pre-tax profit in FY 2017 and FY 2018, as he was given a
9 credit towards his pre-tax profit in both years.

10 7.16 The reduction of her pre-tax profit of \$6.297 million for FY 2018 had no legitimate
11 business justification based upon the results obtained by the call handling division for FY 2017
12 and FY 2018.

13 7.17 The reasons Comtech gave for Ms. Houserman's termination, were merely
14 pretextual for Comtech's discriminatory, gender-based acts.

15 7.18 For example, Comtech claims that Ms. Houserman violated Comtech's Standards
16 of Business Conduct, Policy #08-01-11 (also known as Comtech's HR & Employee Compensation
17 Guidelines) ("Policy #08-01-11").

18 7.19 Policy #08-01-11 requires presidents to accrue the proper amount of bonus related
19 expenses. Comtech required each of its presidents to calculate the amount of "non-equity incentive
20 plan and bonus expense."

1 7.20 When Ms. Houserman discovered what she thought was an error in the reduction
2 to her profit before tax, she emailed Mr. Kornberg, on November 9, 2017, asking him for
3 clarification as to the proper amount of the reduction to her pre-tax profit.

4 7.21 Mr. Kornberg did not timely respond to Ms. Houserman's inquiry about whether
5 there was an error on her FY 2018 Goal sheet, to allow her to properly withhold the correct amount
6 for bonuses.

7 7.22 It was not until February 13, 2018, that Mr. Porcelain finally informed Ms.
8 Houserman that, in fact, she would be subject to the same \$6.297 million in pre-tax profit reduction
9 for FY 2018 that she was for FY 2017.

10 7.23 In each instance where Ms. Houserman directed the accrual of an amount for bonus
11 expenses at the full amount, she was awaiting an answer from Mr. Kornberg as to the whether a
12 \$6.297 million reduction should be applied to her division's pre-tax profit for FY 2018.
13

14
15 **VII. CAUSE OF ACTION FOUR:**
16 **RETALIATION IN VIOLATION OF THE WASHINGTON LAW AGAINST**
17 **DISCRIMINATION AGAINST ALL DEFENDANTS**

18 8.1 Plaintiff incorporates paragraphs 1.1-7.23 as if set forth herein.

19 8.2 RCW 48.60.210 provides that it is an unfair practice for any employer to
20 discriminate against any person because she has opposed any practices that are unlawful under the
21 Washington Law Against Discrimination, Chapter 48.60 RCW.

22 8.3 RCW 48.60.180 provides that it is an unfair labor practice to discriminate against
23 any person in compensation or in other terms or conditions of employment on the basis of sex.

24 8.4 Ms. Houserman engaged in activity protected under RCW 48.60.210 by
25 complaining about Comtech's unfair treatment of her division's pre-tax profit goals on her 2018
26

1 Goal Sheet and by participating in Comtech's investigation of her complaint of gender
2 discrimination.

3 8.5 In February 2018, Ms. Houserman was informed that Comtech purportedly did not
4 make an "error" in calculating the reduction to her pre-tax profit of \$6.297 million.
5

6 8.6 Comtech's use of the \$6.297 million reduction for FY 2018 was not justified by
7 any the FY 2018 budget projection or past performance.

8 8.7 Ms. Houserman questioned why she was being unfairly singled out. During a
9 phone conversation Ms. Houserman had with Mr. Porcelain on February 13, 2018, after Ms.
10 Houserman raised her concerns of disparate treatment, Mr. Porcelain threatened her about pressing
11 the issue to Comtech's Board of Directors, telling her to "be careful what she wished for."
12

13 8.8 He also threatened her that Comtech could claw back a portion of an earlier bonus
14 that was given to her. He claimed that TSYS had given Comtech "inaccurate" numbers for
15 calculating Ms. Houserman's bonus for FY 2015.

16 8.9 On March 19, 2018, Mr. Kornberg notified Ms. Houserman that Comtech had
17 appointed an outside attorney, Ms. Nicole Eichberger, of Proskauer Rose LLP, to "investigate"
18 Ms. Houserman's concerns.

19 8.10 Ms. Eichberger met with Ms. Houserman twice between March 21-March 23, 2018
20 to discuss the reductions to Ms. Houserman's Fiscal Year Goal Sheet for FY 2018.
21

22 8.11 However, it became clear that Ms. Eichberger was retained not to investigate Ms.
23 Houserman's concerns about disparate treatment, but to find a pretext for terminating Ms.
24 Houserman.
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8.14 Ms. Eichberger concluded as a result of her investigation that (1) the \$6.297 million reduction to Ms. Houserman’s pre-tax profit was related to the transfer of the call handling division from Ms. Houserman to Jay Whitehurst, and (2) critically, that it was the company’s intent that this reduction to her “pre-tax profit” would continue for 5 years and that the common treatment from 2017 to 2018 meant that there was no discrimination.

8.16 Because Ms. Houserman's protected activity was a substantial factor in Defendants' decision to terminate Ms. Houserman's employment and Defendants' decision to cause TSYS to file a lawsuit against Ms. Houserman, Defendants violated RCW 48.60.210.

IX. REQUEST FOR RELIEF

A. An award of damages including, but not limited to, lost wages, including front pay, lost discretionary bonus, lost medical, pension, and retirement benefits; and other lost

1 employment benefits in an amount to be proved at trial and that is no less than \$75,000;

2 B. Double damages for lost wages, which includes, without limitation, the “Pro-Rata
3 Retention Bonus” under the 2016 Comtech Agreement, pursuant to RCW 49.52.070;

4 C. Reasonable attorney’s fees and costs pursuant to RCW 49.48.030 and otherwise
5 available at law;

6 D. Pre- and post-judgment interest at the maximum rate allowed by law;

7 E. Such other and further relief as the Court deems just and proper.
8

9 DATED this 1st day of May, 2019.
10

11 **CALFO EAKES & OSTROVSKY PLLC**

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22 *Attorneys for Plaintiff Lynne Houserman*
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EXHIBIT A



February 11, 2016

Via Electronic Mail

Lynne Houserman

Dear Lynne,

Comtech Telecommunications Corp. (the "Company") is pleased to offer you the position of President of Comtech's Safety and Security Technologies Group with a start date that coincides with the close of the acquisition of TeleCommunication Systems, Inc. (TCS) (the "Closing"). You will report directly to Dr. Stanton Sloane, Chief Executive Officer and President of the Company, and will work closely with our subsidiary/group presidents, our CFO as well other corporate staff. This offer is subject to and conditioned upon the occurrence of the Closing and will be void *ab initio* and of no force or effect if the Closing does not occur by March 22, 2016.

Comtech uses a "pay-for-performance" policy to allocate between long-term and short-term compensation, and between cash and non-cash compensation components. The sum of these compensation elements determines Total Direct Compensation (TDC) which is reviewed and approved each fiscal year by the Executive Compensation Committee (ECC) of our Board of Directors.

Your total annualized direct compensation target for fiscal 2017 will be [REDACTED] and will be pro-rated for the "Stub-Period" (the period between the Closing and July 31, 2016). Your targeted TDC consists of:

[REDACTED] of annual base salary
[REDACTED] of targeted annual bonus
[REDACTED] of 5 year stock options
[REDACTED] of 3 year long-term performance-based restricted stock units
= Total Direct Compensation

You will be eligible for a base salary increase, effective August 1, 2017, in accordance with our normal annual salary review. The actual amount of bonus is based on your personal performance and the financial performance of your business group and will be pro-rated for the fiscal year ending July 31, 2016 based on your actual start date. Bonus goals are based on business group targets for pre-tax profit, new orders (funded bookings) and "free" cash flow (cash generated from business group results less business group capital expenditures). In addition, there will be five personal goals. Specific goals for fiscal 2016 and fiscal 2017 will be mutually agreed upon with the CEO and documented on a "Goal-Sheet".

Payment of this bonus is conditioned upon your continued active employment through the payment date of our fiscal year bonuses, which for 2016 is expected to occur no later than October 15, 2016. It also requires that you comply with our Standards of Business Conduct and other Company policies and execute a Bonus Acknowledgement form.

The three year long term performance-based restricted stock unit grant is based on 3 year revenue and EBITDA goals that we will establish for your business unit and which are reviewed and approved by our Executive Compensation Committee. The goals for these performance shares will largely be based on the TCS projections provided to us and adjusted for changes in the business organization as a result of the acquisition. Once the transaction closes and the goals are finalized, the Stub-Period grant is expected to be approved at the next Board of Directors meeting which is currently scheduled for March. The fiscal 2017 grant is generally issued at our August Board of Director's meeting. Each grant is documented in a written agreement.

Stock option grants are expected to have a maximum ten-year contract life, an exercise price equal to the fair market value of Company stock on the date of grant and vest 20% per year over 5 years. The number of options actually awarded is based on your targeted dollar amount (pro-rated for the Stub-Period) which is then converted into options based on the grant-date fair value using the Black-Scholes pricing model.

In addition to the foregoing compensation arrangements, you will be eligible to receive a retention bonus (the "Retention Bonus") of up to one year's base salary (at the rate then in effect), subject to your continued employment with the Company through the third anniversary of the Closing. The Retention Bonus will be paid in a lump sum on the 60th day following the third anniversary of the Closing. Notwithstanding the foregoing, in the event that your employment is terminated by the Company without Cause (as defined below) or you die (each a "Qualifying Termination") on or prior to the third anniversary of the Closing, you will be eligible to receive a pro-rated portion of the Retention Bonus (the "Pro-Rata Retention Bonus"). The amount of the Pro-Rata Retention Bonus will be equal to the greater of (x) one-third of your then-current base salary and (y) the amount determined by multiplying your then current base salary by a fraction, the numerator of which is the number of months between the Closing and your Qualifying Termination and the denominator of which is 36. The Pro-Rata Retention Bonus will only be payable following your termination by the Company without Cause if you deliver and do not revoke a general release of claims in favor of the Company (the "Release"). The Company will deliver the Release to you within seven days of your termination, and the Release must be executed and delivered (and no longer subject to revocation, if applicable) within 60 days following such termination. The Pro-Rata Retention Bonus will be paid in a lump sum on the 60th day following your Qualifying Termination. For purposes of this letter agreement, "Cause" shall mean: (A) your willful misconduct (including a failure to act), willful neglect, willful malfeasance, or gross negligence in carrying out your duties hereunder, or "willful breach" of this letter agreement (other than an inadvertent or nonrecurring breach cured and corrected by you within 30 days after notice thereof by the Company). Under this provision, "willful breach" shall include, but not be limited to, insubordination, serious dereliction of fiduciary obligation, chronic abuse by you of alcohol or narcotics, a violation of any material Company rule, regulation or policy, or a serious violation of any law governing the workplace. It is provided further that no act or failure to act shall be considered "willful" if you reasonably believed in good faith that such act or failure to act was in the best interests of the Company and its affiliates; (B) any act or conduct of dishonesty to the Company by you involving fraud and embezzlement; or (C) your conviction, including a plea of guilty or *nolo contendere*, of a felony involving theft or moral turpitude, other than a felony predicated on your vicarious liability (for purposes of this letter agreement, "vicarious liability" means your liability based on acts of the Company for which you are charged solely

as a result of your offices with the Company and in which you were not directly involved or did not have prior knowledge of such acts).

You will be reimbursed for business expenses incurred in connection with your employment pursuant to our Company-Wide Travel & Business Expense Guidelines.

Based on current Company policy, you will be eligible:

- to accrue four weeks of vacation per year;
- to accrue 5 personal days each calendar year;
- to accrue 5 sick days each calendar year;
- for 10 paid holidays, as defined by the Company;
- to participate in Comtech's 401(k) plan; and
- to participate in the Company's health and life insurance benefits

Attached are sample "Goal Sheets" and forms of agreements for your reference. Company policies are subject to change in the future. In addition, as a condition to this offer, you must execute the Company's standard form of confidentiality and invention assignments agreement, a copy of which is attached hereto.

Any amounts paid pursuant to this letter agreement will be subject to recoupment in accordance with any claw-back policy that the Company has adopted, adopts or is otherwise required by law in the future to adopt.

By signing below, you represent and warrant that you are not bound by any agreement, understanding or restriction (including, but not limited to any covenant restricting competition or agreement related to the confidential and proprietary information and trade secrets of any third party), that is inconsistent with or prevents or limits your ability to fulfill your obligations to the Company.

Please indicate your acceptance of our offer by signing below and return to me as soon as possible. Please feel free to call me with any questions.

Best regards,



Dr. Stanton Sloane
Chief Executive Officer and President
Comtech Telecommunications Corp.


Accepted: L. Houserman

2/27/2016
Date